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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,235	07/24/2003	Glen R. Harrelson	7186 CIP	1277
26158	7590	04/27/2005	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC P.O. BOX 7037 ATLANTA, GA 30357-0037			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,235

Applicant(s)

HARRELSON, GLEN R.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 29-35 is/are allowed.
- 6) ☒ Claim(s) 20, 24-28, 36-37 and 39 is/are rejected.
- 7) ☒ Claim(s) 21-23 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20, 24-28 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliff et al. (5,368,194). Claims 20, 24-28 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Stout (5,518,111). Disclosed is an enclosed carton and a plurality of containers in first and second tiers, the carton comprising a bottom panel (18; 40; respectively), a bottom side panel (22; 56), a top panel (12; 42), a top side panel (14; 48), a plurality of flaps (30, 34, 68, 72; 58, 60, 66, 68, 74, 76, 90, 92) closing ends of the carton, and a divider (90; 20) located between the tiers and having first and second divider ends (at 94 and 98; 24 and adjacent portion of 22, and 26 and adjacent portion of 22), the first divider end having a first split (96; 23) that divides the first divider end into a first top end (between 104 and 96; portion of 22) and a first bottom end (94; 24). The terms “top” and “bottom” of the divider end are not seen to distinguish any particular arrangement. The folded portion (94; 24) is closer the bottom than the unfolded portion (between 104 and 96; portion of 22).

As to claim 24, the divider width is necessarily a width less than the carton to fit within the carton.

As to claim 25, a 24 count container carton is disclosed.

As to claims 27 and 28, a dispenser opening (84 or 86; 12) is disclosed, the extent thereof failing to distinguish any unexpected result.

As to claim 39, the first top end (between 104 and 96; portion of 22) and first bottom end (94; 24) are foldable at their common edge (96; 23).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20, 24-28, 36-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Oliff et al. ('194) and Stout (5,518,111) in view of Chaussadas (5,031,770). Oliff et al. and Stout have been explained above and each discloses a divider (90; 20) in general. Chaussadas discloses a divider (as shown) including a split as much as claimed. To modify the enclosed carton of either Oliff et al. or Stout employing a divider with a split as disclosed by Chaussadas would fail to distinguish any new and unexpected result, as a divider including a split was known in the can carton divider and its selection as a divider would fail to distinguish any new or different result in combination with Oliff et al..

As to claim 24, the divider width is necessarily a width less than the carton to fit within the carton.

As to claim 25, a 24 count container carton is disclosed by Oliff et al. and Stout.

As to claim 26, Chaussadas discloses a second split opposed to the first split.

As to claims 27 and 28, a dispenser opening (84 or 86; 12) is disclosed by Oliff et al. and Stout.

As to claims 36 and 37, the split is an aperture in Chaussadas as much as applicant's and extends inwardly from an edge along a length of the divider.

As to claim 39, the first top end (between 104 and 96; portion of 22) and first bottom end (94; 24) are foldable at their common edge (96; 23) in both Oliff et al. and Stout.

5. Applicant's arguments filed April 4, 2005 have been fully considered but they are not persuasive. There is nothing in the claims that distinguishes the "split" from a fold line as in Oliff et al., as argued by applicant. What makes a "split"? Borders between countries often can not be easily ascertained, but they define a real "split" between the countries. Why does a fold line not constitute a "split"?

6. This action is made non-final in view of the new grounds of rejection.

7. Claims 1-19 and 29-35 are allowed.

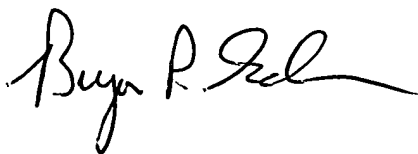
8. Claims 21 and 38 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Dependent claims 22 and 23 would also then be allowable.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are cartons with dividers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG